

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAROLYN JENNIFER MOSLEY,

Plaintiff,

CIVIL ACTION NO. 13-14152

v.

DISTRICT JUDGE NANCY G. EDMUNDS

COMMISSIONER OF
SOCIAL SECURITY,

MAGISTRATE JUDGE MARK A. RANDON

Defendant.

REPORT AND RECOMMENDATION TO DISMISS
FOR FAILURE TO TIMELY EFFECTUATE SERVICE

I. INTRODUCTION

This matter is before the Court on Plaintiff's challenge to the Commissioner's final denial of her benefits application (Dkt. No.1). A review of the record indicated that there has been no return of service of the summons and complaint on Defendant. On January 29, 2014, the Court issued an order to show cause why this case should not be dismissed for failure to effect timely service of process (Dkt. No. 4). Plaintiff was given until February 12, 2014 to respond to the order to show cause and cautioned that failure to comply with the order would result in a recommendation for dismissal (Dkt. No. 4). Because Plaintiff failed to respond to the Court's show cause order and failed to effect timely service of process, this Magistrate Judge

RECOMMENDS that Plaintiff's Complaint be **DISMISSED WITHOUT PREJUDICE**.

II. ANALYSIS

Federal Rule of Civil Procedure 4(m) provides that if service is not effectuated within 120 days, the Court must dismiss the action without prejudice as to that defendant. "Absent a

showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.” *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996) (citing *Habib v. General Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994)). It is Plaintiff’s burden to establish good cause for failing to timely effect service. *Habib v. General Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994). Further, Eastern District of Michigan Local Rule 41.2 provides that if the parties have not taken action within a reasonable time, the Court may enter an order dismissing the case for lack of prosecution.

III. CONCLUSION

Because Plaintiff failed to respond to the Court’s show cause order and failed to effect timely service of process, this Magistrate Judge **RECOMMENDS** that Plaintiff’s Complaint be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4(m) and Eastern District of Michigan Local Rule 41.2.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Sec'y of HHS*, 932 F.2d 505 (6th Cir.1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of HHS*, 931 F.2d 390, 401 (6th Cir.1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987). Pursuant to Eastern District of Michigan Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

s/Mark A. Randon

MARK A. RANDON

UNITED STATES MAGISTRATE JUDGE

Dated: February 13, 2014

Certificate of Service

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, February 13, 2014, by electronic and/or ordinary mail.

s/Eddrey Butts

Case Manager for Magistrate Judge Mark A. Randon